

APPEAL NO. 020124  
FILED FEBRUARY 21, 2002

Following a contested case hearing held on January 3, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the correct date of the claimed injury is \_\_\_\_\_; that the respondent (carrier) is relieved from liability under Section 409.002 because of the appellant's (claimant) failure to timely notify his employer pursuant to Section 409.001; that the claimant did not sustain a compensable injury in the form of a repetitive trauma injury; and that because the claimant did not sustain a compensable injury, he did not have disability. The claimant has appealed the date of injury and timeliness of the notice determinations on sufficiency of the evidence grounds. The carrier has filed a response urging the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that after working for the employer as a painter and sandblaster for several years he experienced pain and numbness in his hands and that he saw Dr. H about these symptoms on August 5, 1997, and again on \_\_\_\_\_. Dr. H's records reflect that the claimant was diagnosed with bilateral carpal tunnel syndrome (CTS), although the claimant denied having been provided with that diagnosis by Dr. H. The claimant said that after seeing Dr. H on \_\_\_\_\_, he was referred to Dr. A, a hand specialist, whom he saw on July 17, 2000. Dr. A's records reflect that the claimant returned to Dr. A on March 16, 2001, and that on April 3, 2001, Dr. A performed carpal tunnel release surgery on his left hand. The claimant further stated that when he asked his boss about "disability" payments, he was told he had not had an accident on the job so he then asked Dr. A, on April 9, 2001, if his CTS was caused by his work and she said that it was. He conceded that his hands did not hurt before commencing work as a painter and sandblaster; that his hands would not hurt when he reported to work but became increasingly symptomatic as his workday progressed; and that he engaged in no other activities that caused pain and numbness in his hands. At one point, he testified that since he was working he supposed that his symptoms could be related to his work but that he was "not sure about it" until after being so advised by Dr. A.

The date of an occupational disease injury is the date the claimant knew or should have known that the claimed injury may be work related. Section 408.007. The date of injury is, generally, a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994. The claimant does not dispute the finding that he provided notice of a work-related injury to the employer on May 1, 2001. He contends, however, that his notice on that date was timely because his date of injury is \_\_\_\_\_, the date that Dr. A told him she felt his injury was work

related. The Appeals Panel has held that a claimant need not necessarily have medical confirmation of a condition before being found to “know or should have known” that the injury was work related. See, e.g., Texas Workers’ Compensation Commission Appeal No. 92559, decided December 3, 1992. The hearing officer could consider that, on \_\_\_\_\_, when the claimant returned to Dr. H for his hand symptoms and was referred to a hand specialist, that he knew or should have known on that date that his hand problems were related to his work. We are satisfied that the challenged findings concerning the date of injury and the providing of timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

\_\_\_\_\_  
Philip F. O’Neill  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Judy L. S. Barnes  
Appeals Judge

\_\_\_\_\_  
Edward Vilano  
Appeals Judge